IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.653 OF 2005

Shri Raghunath Sopan Shinde & Ors. ..Appellants

versus

1.Sandipan Shankar Shinde since
deceased through legal heirs
1A.Ishwar Shankar Shinde & Ors. .. ..Respondents

Mr.Machhindra Patil for appellants

CORAM : P.V.KAKADE, J.

DATE : 10TH AUGUST, 2005.

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by Addl.District Judge, Pandharpur dated 7.11.2003 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Sangola dated 27.4.2000 dismissing the suit for declaration and perpetual injunction against the defendants.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The plaintiffs had come with the case that open space admeasuring 75 ft x 30 ft situated at village Balwadi is the disputed property. According to the plaintiffs, the said property is their ancestral property and defendants are concerned with the said property. The plaintiffs are stated to have in possession thereof. In the year 1982 City Survey took place and in that survey suit property was recorded in the name of plaintiffs. Against that decision the defendants preferred an appeal, which is filed on 1.12.1984. By that decision the suit property was ordered to be recorded in the name of defendants. It is the case of the plaintiffs that the decision of City Survey Officer dated 1.12.1984 was illegal, and therefore, seeks declaration regarding ownership over the suit property and injunction against the defendants. The defendants challenged the suit on various grounds, inter alia, submitting that the plaintiffs' allegations are not correct and as such suit sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and on the basis of available evidence came to the conclusion that the plaintiffs failed to prove ownership over the suit property i.e. the open space admeasuring 75 ft. x 100 ft. and as such the suit came to be dismissed for declaration as well as consequential relief of perpetual injunction against the defendants. The appeal was carried to the District Court. The learned Addl. District Judge concurred with the findings recorded by the lower court and dismissed the appeal. Hence the present appeal.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal. It must be noted that the case of the plaintiffs is that the open space admeasuring 75 ft x 30 ft is the part of their ancestral property and it was shown in the name of defendants in the Survey made by City Survey Officer in the year 1982 that was challenged by the plaintiffs by preferring an appeal but it was decided against them on 1.12.1984 and therefore, the plaintiffs are seeking declaration of ownership title to the said property. If the plaintiffs wanted to challenge the decision of the competent authority of the

City Survey Officer, they are not made party to the suit but what is claimed is the declaration of ownership and consequential relief of perpetual injunction against the defendants.

. Besides this aspect, the entire evidence on record shows that two of the houses of the plaintiffs are their ancestral properties whereas remaining house is purchased by them by sale deed Exh.95, which is house bearing Grampanchayat No.59 and on the eastern side public road was shown. The area purchased under that sale deed is East West 36 meter and North South 3.50, it was exclusively constructed portion on its Southern side and Northern side houses owned by the appellants i.e. Grampanchayat House Nos.58 and 60. In other words, the area of all the three houses as described in plaint and as appearing in City Survey record does not tally with each other, in order to show that the suit premises consisting of 75 ft x 30 ft. is owned by the appellants. Be as it may, all the relevant issues are seen to be issues of fact which are properly appreciated by both the courts below and therefore, it would brook no interference, especially when there is no substantial question of law involved in this appeal.

5. In the result the appeal stands dismissed. Consequently Civil Application No.1118 of 2005 also stands dismissed.